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IN THE
Supreme Court of the United States

OCTOBER TERM, 1993

AMERICAN AIRLINES, INC.,
Petitioner,
v.
MYRON WOLENS, et al.,
Respondents.

On Writ of Certiorari to the
Supreme Court of Illinois

JOINT APPENDIX

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1. Ill. S. Ct. Opinion (12/16/93)	1a
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5. Ill. App. Ct. Opinion (12/12/90)	31a
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P.S. Tucker, et al. American Airlines, Inc.

Case No. 89-CH-119

RELEVANT DOCKET ENTRIES

Date	Pleading
January 6, 1989	Class Action Complaint (Greenfield & Chimicles) and (Class—Chertow & Miller)
January 12, 1989	Summons (Chertow & Miller)
January 24, 1989	Notice of Motion (Jenner & Block)
January 24, 1989	Appearance (Jenner & Block)
January 24, 1989	Motion to Dismiss (Jenner & Block)
January 24, 1989	Alternative Motion to Dismiss, etc. (Jenner & Block)
January 24, 1989	Motion to Consolidate (Jenner & Block)
January 24, 1989	Exhibits
February 2, 1989	Alias Summons
March 23, 1989	Notice of Motion (Jenner & Block)
March 23, 1989	Motion for Cert. (Jenner & Block)
March 23, 1989	Interlocutory Appeal
April 4, 1989	Notice of Motion (Much, Shelist, et al.)
April 4, 1989	Agreed Motion for Extension of Time, et al.
April 7, 1989	Notice of Filing
April 7, 1989	Plaintiffs' Memo in Opposition to Defendant's Motion, et al.
April 7, 1989	Exhibits
April 21, 1989	Notice of Filing (Jenner & Block)

Date	Pleading
5/23/89	American's Motion to Stay Discovery (Jenner & Block)
5/23/89	Notice of Motion
5/23/89	Memorandum in Opposition to Plaintiff's, et al.
5/28/89	Exhibits
June 14, 1989	Motion to Stay (Jenner & Block)
June 14, 1989	Notice of Motion
January 9, 1990	Notice of Motion
February 21, 1991	Mandate

Date	Order
January 26, 1989	(CH13-1838) Motion to Consolidate set for 2/9/89 at 10:30 (Shields)
May 2, 1989	(CH18-1408) Order—Prayers for Injunction Dismissed with Prejudice and Prayers for Punitive Damages Dismissed without Prejudice and Prayers for Monetary Relief Stricken and Plaintiff Given Leave to File Amended Complaint by (6/6/89) (Dunne)
June 16, 1989	(CH26-140) Order—Proceedings Stayed Per Order and Case Set for Status on 12/14/89 at 10:00 a.m. (Dunne)
December 13, 1989	(CH53-1000) Reset from 12/14/89 at 10:00 a.m. to 1/4/90 at 10:00 a.m. (Dunne)
January 4, 1990	(CH56-523) Order—Case Dismissed without Prejudice and with Leave to Reinstate (Dunne)
February 1, 1990	(CH5-675) Plaintiffs' Motion to Vacate Order 1/4/90 Dismissed as Without Prejudice and Case Reinstated and Stay Extended 5/16/89 Vacated (Dunne)
May 8, 1990	(CH21-1237) Order—Continuing Status to 8/7/90 at 10:00 a.m. (Dunne)
August 7, 1990	(CH37-1234) Order—Case Set for Status 11/29/90 at 10:00 a.m. (Dunne)

*Myron Wolens v. American Airlines, Inc.***RELEVANT DOCKET ENTRIES**

Date	Pleading
August 19, 1988	Complaint & Copy (Gilbert W. Gordon)
August 30, 1988	Summons
September 9, 1988	Appearance (Peterson)
September 14, 1988	Stipulation (Peterson)
September 23, 1988	Notice (Peterson)
September 23, 1988	Removed Bond (Peterson)
September 23, 1988	Petition for etc.
September 23, 1988	Exhibits
October 26, 1988	Notice (Peterson)
November 9, 1988	Notice of Motion (Jenner & Block)
November 9, 1988	Motion to Substitute (Jenner & Block)
November 9, 1988	Substitution of Attorneys (Jenner & Block)
December 19, 1988	Notice of Filing (Jenner & Block)
December 19, 1988	Motion to Dismiss (Jenner & Block)
December 19, 1988	Memorandum in Support of Motion to Dismiss (Jenner & Block)
December 19, 1988	Motion to Dismiss Alternative et al. (Jenner & Block)
December 19, 1988	Memorandum in Support of Motion to Dismiss (Jenner & Block)
December 19, 1988	Exhibits for Defendant's Memorandum et al. (Jenner & Block)
December 21, 1988	Notice of Motion
December 21, 1988	Motion for Admission of Counsel

Date	Pleading
December 21, 1988	Agreed Motion to Set Briefing Schedule, et al.
December 23, 1988	Notice of Filing
December 23, 1988	Supplemental Exhibits to Memorandum in Motion to Dismiss
December 23, 1988	Exhibits
January 26, 1989	Notice of Motion (Marks, Marks & Kaplan)
January 26, 1989	Motion to Extend Time
January 31, 1989	Notice of Filing
January 31, 1989	Plaintiff's First Request for Production of Documents
February 6, 1989	Motion to Stay Discovery (Jerold S. Solovy)
February 6, 1989	Notice of Motion (Jerold S. Solovy)
February 28, 1989	Notice of Motion (Marks, Marks & Kaplan)
February 28, 1989	Amended Petition for Change of Venue
March 1, 1989	Notice of Filing
March 1, 1989	Plaintiff's Joint Memorandum in Opposition, et al.
March 1, 1989	Exhibits to Plaintiff, et al.
March 13, 1989	Notice of Filing (Jenner & Block)
March 13, 1989	Reply Memorandum in Support, etc. (Jenner & Block)
March 23, 1989	Letter (Laura Kaster)
March 23, 1989	Notice of Motion (Jenner & Block)
March 23, 1989	Defendant's Motion for Cert. of Que., etc. (Jenner & Block)

Date	Pleading
April 4, 1989	Notice of Motion
April 4, 1989	Agreed Motion for Extension of Time, etc. (Edith F.C.)
April 7, 1989	Notice of Filing (Much, Shelist)
April 7, 1989	Plaintiff's Memorandum in Opposition to Defendant's etc. (Much, Shelist)
April 7, 1989	Exhibits
April 21, 1989	Notice of Filing (Jenner & Block)
April 21, 1989	Defendant's Reply Memorandum in Support of etc. (Jenner & Block)
	Memorandum in Opposition to Plaintiff's Motion etc. (Jenner & Block)
	Exhibits (Jenner & Block)
	Notice of Motion (Jenner & Block)
	American's Motion to Stay Discovery (Jenner & Block)
May 25, 1989	Amended Notice of Motion (Marks, Marks)
May 25, 1989	Motion to Compel Production (Marks, Marks)
May 26, 1989	Notice of Filing (Marks, Marks)
May 26, 1989	Joint 1st Amended Class Action, etc. (Marks, Marks)
June 14, 1989	Notice of Motion (Jenner & Block)
June 14, 1989	Motion of Defendant to Stay, etc. (Jenner & Block)
June 14, 1989	Exhibits
June 28, 1989	Letter
January 31, 1990	Notice of Filing (Jenner & Block)

Date	Pleading
January 31, 1990	Motion of Defendant to Vacate Order of Dismissal (Jenner & Block)
February —, 1990	Notice of Motion (Marks, Marks)
February —, 1990	Motion to Vacate Order of Dismissal and Reinstate Case (Marks, Marks)
February 21, 1991	Mandate
February 28, 1991	Recall Mandate

Myron Wolens v. American Airlines, Inc.

RELEVANT DOCKET ENTRIES

Date	Order
November 14, 1988	(CH45-407) Order—Leave for Defendant to Answer or Otherwise Plead by 12/14/88 (Shields)
December 15, 1988	(CH49-664) Order—Leave for Defendant to Answer or Otherwise Plead by 12/19/88 (Shields)
December 23, 1988	(CH50-999) Order—Hearing on 2-619 Motion Set for 2/22/89 at 11:00 a.m.; American's 2-615 Motion Ent. and Cont. (Shields)
December 23, 1988	(CH58-10—) Order—Leave for American Airlines to File Appearance of Joseph Tate and Christine Levin as counsel <i>pro hac vice</i>
January 26, 1989	(CH3-1833) Motion to Extend Time set for 2/8/89 at 10:30 a.m. (Shields)
February 8, 1989	(CH5-827) Order—Motion to Dismiss Set for 3/2/89 at 11:00 a.m. (Shields)
February 23, 1989	(CH7-311) Order—Continued to 3/10/89 at 10:30 (Shields)
December 28, 1989	(CH7-1402) Order—Plaintiff's Original for Change of Venue with Hearing Withdrawn; Dates of 3/10/89 and 3/20/89 Stricken
February, 1989	(CH7-1403) Order—FWD to Reassign (Shields)
March 21, 1989	(CH11-18) Order—Memorandum, Opinion and Defendant's Motion to Dismiss Denied and Defendant to Answer or Plead Ten Days After Hearing on Pending 2-615 Motion

	Order
February, 1989	(CH 11-24) Order—Defendant's Motion to Dismiss Denied and Plaintiff's File Opposition Brief to Defendant's Motion to Strike; Set Hearing for 5/2/89, 11:00 a.m. and Defendants File Answer to Complaint Ten Days or by 5/12/89
March 23, 1989	(CH11-1004) (1) Order—Defendant's Motion for Certification of Question for Interlocutory Appeal; (89CH11-1006) (2) Order—Plaintiff's Motion to Withdraw Jury Demand Granted (Dunne)
April 4, 1989	(CH13-1331) Order—Time Extended for Plaintiff's to File Response Brief to 4/7/89 and Time Extended for Defendants to File Reply to 4/21/89 (Dunne)
May 2, 1989	(CH18-1408) Order—prayers for Injunction Dismissed with Prejudice and Prayers for Monetary Relief Stricken and Plaintiff has Leave to File Amended Complaint within 35 Days, 6/6/89 (Dunne)
May 25, 1989	(CH22-1027) Plaintiff Given to 6/14/89 to File Reply Memo and American File Reply Memo by 6/28/89; Plaintiff's Motion to Compel and American's Motion to Stay Discovery Set for Hearing 7/11/89 at 11:00 a.m. (Dunne)
June 16, 1989	(CH26-140) Order—Proceeding stayed Per Order and Case Set for Status 12/14/89, 10:00 a.m. (Dunne)
December 13, 1989	(CH53-1000) Status 12/14/89 at 10:00 a.m. (Dunne)
January 4, 1990	(CH56-523) Order—Case Dismissed without Prejudice with Leave to Reinstate (Dunne)

Order

February 1, 1990	(CH5-675) Plaintiff's Motion to Vacate Order of 1/4/90 Dismiss Case Without Prejudice Granted and Case Reinstated and Stay Extended to 5/16/89 Vacated (Dunne)
May 8, 1990	(CH21-1237) Order—Continuing Status to 8/7/90 at 10:00 a.m. (Dunne)
September 14, 1990	(CH43-1168) Order—Plaintiff's Motion Entered and Continued to 9/17/90 at 11:00 a.m., Certain Party Leave to File Response Instantly (Dunne)
November 29, 1990	(CH55-897) Order—Set Status 5/16/91 at 10:00 a.m. (Dunne)
January 1, 1991	(CH2-305) Order—Case Stricken from Calendar (Dunne)
May 16, 1991	(CH26-1433) Order—Case on Dormant Call (Dunne)
May 11, 1994	Mandate Affirmed

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Civil No. 88-C-770W

AMERICAN AIRLINES, INC.,

vs. *Plaintiff,*

PLATINUM WORLD TRAVEL; COUPON CONNECTION; ERNEST W. CARLSON; BRUCE H. BRIGGS; ROBERT J. BAUMANN; and RANDALL CHRISTENSEN;

Defendants.

COMPLAINT

[Filed Aug. 31, 1988]

Plaintiff AMERICAN AIRLINES, INC. ("AMERICAN"), for its Complaint against PLATINUM WORLD TRAVEL; COUPON CONNECTION; ERNEST W. CARLSON; BRUCE H. BRIGGS; ROBERT J. BAUMANN; and RANDALL CHRISTENSEN, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1332 and 1331 in that (1) the matter in controversy exceeds the sum of \$10,000, exclusive of interest and costs, and is between citizens of different states and (2) certain of AMERICAN's claims arise under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* Jurisdiction is also founded on the principles of ancillary and pendent jurisdiction.

2. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1392 and 18 U.S.C. § 1965 in that the claim arose in this District, defendants do business in this District,

transact their affairs in this District, are found in this District, and reside in this District.

OVERVIEW OF THIS COMPLAINT

3. AMERICAN brings this action to enjoin and recover damages resulting from defendants' ongoing pursuit of a business whose essential purpose is to commit and induce others to commit willful violations of the rules of the AAdvantage frequent flyer program so that defendants may wrongfully sell valuable tickets on AMERICAN flights without compensating AMERICAN. Defendants have perpetrated this unlawful scheme by engaging and inducing others to engage in a pervasive pattern of dishonest conduct calculated to conceal the violations of the AAdvantage rules which constitute the essence of defendants' business. As alleged more fully below, this pattern of dishonesty includes paying AAdvantage members to obtain and wrongfully resell AAdvantage awards, good for free and discount travel on AMERICAN; directing those AAdvantage members to conceal and misrepresent material facts in order to avoid detection by AMERICAN; selling said AAdvantage awards and or tickets on AMERICAN flights based on the unlawfully obtained AAdvantage awards, in violation of the AAdvantage rules; inducing and directing the purchasers of those tickets not only to conceal material facts, but to lie in response to inquiries from AMERICAN regarding the source of their tickets and how they obtained them; and procuring and reselling AAdvantage awards that have been obtained through computer fraud, theft and deception. Based on their improper conduct, defendants have caused AMERICAN to provide valuable services on AMERICAN flights without compensation. AMERICAN has lost millions of dollars in revenue, while its relationships with AAdvantage members, other actual and potential customers, as well as authorized travel agents, have been seriously interfered with and damaged in numerous respects.

PARTIES

4. Plaintiff AMERICAN AIRLINES, INC. is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 4200 American Boulevard, Fort Worth, Texas 76155. It engages in the business of air carriage of passengers and cargo.

5. Defendant PLATINUM WORLD TRAVEL ("PLATINUM") is a corporation organized and existing under the laws of the State of Utah with its principal place of business at 40 South Redwood Road, Suite 103, North Salt Lake City, Utah. At all relevant times PLATINUM has engaged in the business of procuring and providing for sale on a nationwide basis airline frequent flyer awards for air transportation on AMERICAN and other airlines.

6. Defendant COUPON CONNECTION is a partnership which AMERICAN alleges on information and belief is owned by defendants ERNEST W. CARLSON, BRUCE H. BRIGGS and ROBERT J. BAUMANN, and is doing business from an office located at 40 South Redwood Road, Suite 103, North Salt Lake City, Utah. At all relevant times COUPON CONNECTION has engaged in the business of procuring and providing for sale on a nationwide basis airline frequent flyer awards for air transportation on AMERICAN and other airlines.

7. Defendant ERNEST W. CARLSON ("CARLSON") is a citizen of the State of Utah and resides in this District. AMERICAN alleges on information and belief that CARLSON is the vice president, and a director, shareholder and employee, of defendant PLATINUM, and is an owner of defendant COUPON CONNECTION. At all relevant times CARLSON has engaged in the business of procuring and providing for sale on a nationwide basis airline frequent flyer awards for air transportation on AMERICAN and other airlines.

8. Defendant BRUCE H. BRIGGS ("BRIGGS") is a citizen of the State of Utah and resides in this District. AMERICAN alleges on information and belief that BRIGGS currently is the president, and a director, shareholder and employee, of defendant PLATINUM, and is an owner of defendant COUPON CONNECTION. At all relevant times BRIGGS has engaged in the business of procuring and providing for sale on a nationwide basis airline frequent flyer awards for air transportation on AMERICAN and other airlines.

9. Defendant ROBERT J. BAUMANN ("BAUMANN") is a citizen of the State of Utah and resides in this District. AMERICAN alleges on information and belief that defendant BAUMANN is the secretary, and a director and employee, of defendant PLATINUM, and is an owner of defendant COUPON CONNECTION. At all relevant times BAUMANN has engaged in the business of procuring and providing for sale on a nationwide basis airline frequent flyer awards for air transportation on AMERICAN and other airlines.

10. Defendant RANDALL CHRISTENSEN ("CHRISTENSEN") is a citizen of the state of Utah and resides in this District. AMERICAN alleges upon information and belief that CHRISTENSEN is the comptroller of defendant PLATINUM and is associated with defendant COUPON CONNECTION. At all relevant times CHRISTENSEN has engaged in the business of procuring and providing for sale on a nationwide basis airline frequent flyer awards for air transportation on AMERICAN and other airlines.

11. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, were and are involved as officers, directors and/or owners of a variety of entities, corporate and otherwise, including PLATINUM, COUPON CONNECTION and TEXAS BUDGET FLIGHTS, INC., a corporation organized and existing

under the laws of the State of Texas which also is doing business under the assumed name TEXAS TRAVELER. TEXAS BUDGET FLIGHTS, INC. lists defendants CARLSON and BRIGGS, both of 40 South Redwood Road, North Salt Lake City, Utah, as directors and as president and secretary respectively, and defendant BAUMANN as president of TEXAS TRAVELER. (TEXAS BUDGET FLIGHTS, INC. and TEXAS TRAVELER hereinafter are referred to collectively as "TEXAS TRAVELER.") TEXAS TRAVELER regularly conducts business in this District, and lists its tax address as 40 South Redwood Road, North Salt Lake City, Utah, maintains a bank account in Ogden, Utah. At all relevant times TEXAS TRAVELER has engaged in the business of procuring or providing for sale on a nationwide basis airline frequent flyer awards for air transportation on AMERICAN and other airlines.

12. AMERICAN alleges, upon information and belief, that at all relevant times each of the named defendants and their co-conspirators was, in engaging in the acts described herein, acting with the consent of the co-defendants or their later ratification.

FACTS COMMON TO ALL CLAIMS

The AAdvantage Program

13. In May 1981, AMERICAN launched the AAdvantage program, an awards program especially designed to be attractive to its best customers, i.e., those who frequently fly on AMERICAN. AMERICAN conceived, designed and implemented the AAdvantage program to reward repeat customers and thereby develop customer loyalty by encouraging a closer and more continuous relationship between AMERICAN and its best customers.

14. AMERICAN offered its customers the opportunity to become AAdvantage members and agreed to establish mileage accounts in which AMERICAN would keep

track of the total number of miles that the member-customer flies on AMERICAN. AMERICAN offered its member-customers, in consideration of their accumulating specified numbers of miles flying on AMERICAN, the opportunity, subject to the rules of the AAdvantage program, to obtain free and discount travel and to upgrade from coach to first class service on future flights on AMERICAN to specified destinations.

AAdvantage Rules

15. AMERICAN structured the rules of the AAdvantage program which govern the use of AAdvantage mileage credits specifically to provide a benefit for its best customers that would develop their loyalty to AMERICAN without diminishing its opportunity to sell tickets on AMERICAN to its other customers and its potential customers who are not members of the AAdvantage program. These rules define the economic relationship between AMERICAN and members of the AAdvantage program.

16. Two of the most important rules AMERICAN put into its AAdvantage program to accomplish the above-described purposes are:

- (a) The AAdvantage mileage and AAdvantage awards cannot be purchased, bartered, or sold
- (b) AAdvantage mileage or awards are void if transferred for cash or other consideration.

17. Under the rules of the AAdvantage program an AAdvantage member-customer, upon accumulating sufficient mileage to be eligible for an award, must notify AMERICAN in writing of the award he or she desires to claim (e.g., a free round-trip from Los Angeles to New York).

18. Under the rules of the AAdvantage program prohibiting the purchase, barter or sale of AAdvantage mileage or awards, AAdvantage certificates may be issued in

any name designated in writing by the AAdvantage member at the time he or she requests that they be issued, but once an award certificate is issued, it is not transferable except to the designated recipient's family members with the same surname or to the recipient's spouse.

19. Under the rules of the AAdvantage program, AMERICAN will mail the AAdvantage award certificate only to the AAdvantage member requesting the award at his or her address on file with AMERICAN.

20. Under the rules of the AAdvantage program, the award certificate must be exchanged for tickets for air travel at AMERICAN ticketing locations.

21. Under the rules of the AAdvantage program, tickets will be issued to the individual designated as the passenger on the award certificate, a family member with the same surname, or the spouse of the designated passenger.

22. Under the rules of the AAdvantage program, travel awards and special offers are subject to change without notice. AMERICAN reserves the right to modify or to terminate the program at any time.

Notice of AAdvantage Rules

23. AMERICAN notifies AAdvantage members of the rules governing the AAdvantage program in several ways. AMERICAN sends new members a copy of a brochure outlining the rules governing the AAdvantage program when they join the program. The brochure sets forth the rules described above, including the two key AAdvantage rules, to wit (a) the purchase, barter or sale of AAdvantage mileage or AAdvantage awards is prohibited and (b) AAdvantage mileage and awards are void if transferred for cash or other consideration.

24. AMERICAN regularly restates these two key AAdvantage rules in additional materials AMERICAN sends to its AAdvantage members, including:

- (a) AAdvantage Flight Award Certificates and AAdvantage Certificate Fulfillment Inserts that AMERICAN sends to each AAdvantage member claiming a mileage award.
- (b) AAdvantage mileage award statements that AMERICAN sends to each of its AAdvantage members each month indicating the number of miles that the member has flown on AMERICAN as of a date specified.
- (c) AAdvantage newsletters that AMERICAN sends periodically providing information on special awards.

25. Defendants were members of AMERICAN's AAdvantage program. More specifically, CARLSON holds 3 AAdvantage accounts, BRIGGS holds 1 AAdvantage account, BAUMANN and CHRISTENSEN each hold 2 AAdvantage accounts, and other employees and officers of PLATINUM and COUPON CONNECTION also have multiple AAdvantage accounts and, as AAdvantage members, they were fully notified and apprised of the key rules of the AAdvantage program set forth herein.

The Defendants' Common Schemes

26. Since at least 1986, defendants individually and collectively have engaged in schemes to purchase AAdvantage mileage awards from AMERICAN's AAdvantage member-customers; to sell the wrongfully purchased AAdvantage awards to AMERICAN's customers and potential customers, all without compensation to AMERICAN, knowing that under the explicit AAdvantage rules that govern AMERICAN's relationship with its AAdvantage member-customers, neither AAdvantage mileage nor travel awards may be purchased, bartered or sold, and that mileage and travel awards are void if transferred for cash or other consideration; and to purchase and resell AAdvantage award certificates that have been acquired through computer fraud, theft and deception.

Defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN have carried out this scheme in part through their ownership and/or control of a variety of entities, corporate and otherwise, including but not limited to defendants PLATINUM and COUPON CONNECTION, as well as TEXAS TRAVELER (hereinafter collectively the "Controlled Entities").

27. To carry out these schemes, AMERICAN alleges that defendants, sometimes acting through the Controlled Entities, have done, and continue to do, the following:

- (a) Induce AMERICAN's AAdvantage member-customers (i) to request from AMERICAN award certificates by designating in writing a name and travel plan that defendants supply, concealing from AMERICAN that they intend to sell said certificates to defendants and (ii) to sell their AAdvantage awards to defendants, in violation of the AAdvantage rules.
- (b) Induce AMERICAN's customers and potential customers to purchase air transportation from defendants rather than from AMERICAN in violation of the AAdvantage rules.
- (c) Induce AMERICAN's customers and potential customers to purchase air transportation from defendants rather than from AMERICAN by falsely and fraudulently misrepresenting that defendants' wrongfully obtained AAdvantage certificates and tickets can be purchased and sold.
- (d) Aid and assist persons who purchase such tickets in wrongfully obtaining air transportation on AMERICAN by instructing them (i) to conceal from representatives of AMERICAN that they have purchased the AAdvantage award ticket, and (ii) to misrepresent to AMERICAN the manner in which they obtained the ticket (e.g., to state that the AAdvan-

tage ticket was a gift, rather than revealing that it was purchased) if they are questioned by an AMERICAN representative.

- (e) Aid and assist persons who purchase such tickets that have been issued in names other than their own wrongfully to obtain air transportation on AMERICAN by instructing them to misrepresent to AMERICAN that they are the person whose name appears on the AAdvantage award ticket, in some cases providing such persons with false identification documents to present to AMERICAN representatives.
- (f) Induce AMERICAN's authorized travel agents to purchase from defendants fraudulently procured AAdvantage awards for resale to AMERICAN passengers without compensation to AMERICAN and in violation of AMERICAN's contract with the travel agents and the AAdvantage rules.
- (g) Purchase and resell AAdvantage certificates that have been obtained based upon mileage credits stolen from AMERICAN.

FIRST CLAIM FOR RELIEF

(Tortious Interference
Against All Defendants)

28. AMERICAN repeats the allegations of Paragraphs 1 through 27 with the same force and effect as if fully set forth herein.

29. The AAdvantage rules govern the use of AAdvantage mileage credits and define the economic relationship between AMERICAN and members of the AAdvantage program.

30. AMERICAN alleges that defendants knew that the AAdvantage rules prohibit the purchase, sale or barter of AAdvantage mileage and awards.

31. AMERICAN alleges that defendants have paid and continue to pay money to induce AAdvantage members to violate the AAdvantage rules by selling to defendants AAdvantage awards. Annexed hereto as Exhibit A is a true and correct copy of COUPON CONNECTION's promotional materials, in which it admits that it "buy[s] . . . Frequent Flyer Awards."

32. AMERICAN alleges that defendants have sold and continue to sell such wrongfully-obtained certificates for air transportation on AMERICAN to AMERICAN's passengers without any compensation to AMERICAN and in violation of the AAdvantage rules.

33. As a result of the foregoing, defendants wrongfully and intentionally interfered and continue to interfere with AMERICAN's business and economic relationship with its Advantage member-customers and the AAdvantage program. In consequence thereof, AMERICAN has been wrongfully deprived of the very economic benefits that the AAdvantage program was carefully crafted to ensure, including passenger loyalty and revenues.

34. As a result of defendants' tortious interference, AMERICAN has suffered damages in an amount in excess of \$10,000.

35. The foregoing actions of defendants were willful and malicious and AMERICAN is therefore entitled to an award of punitive or exemplary damages.

SECOND CLAIM FOR RELIEF

(Tortious Interference
Against All Defendants)

36. AMERICAN repeats the allegations of Paragraphs 1 through 27 and 29 through 33 with the same force and effect as if fully set forth herein.

37. AMERICAN has valid contracts with its authorized travel agents which require that the travel agents sell

AMERICAN's tickets and services in accordance with AMERICAN's rules.

38. AMERICAN alleges, upon information and belief, that defendants knew of AMERICAN's contract with its authorized travel agents and that the travel agents are required to comply with AMERICAN's rules, including the AAdvantage rules.

39. AMERICAN alleges, upon information and belief, that defendants wrongfully and intentionally interfered with AMERICAN's business and economic relationships with travel agents authorized to issue tickets for travel on AMERICAN by intentionally inducing them to purchase from defendants wrongfully procured AAdvantage awards for resale to AMERICAN passengers without compensation to AMERICAN and in violation of AMERICAN's contract with the travel agents and the AAdvantage rules. By way of example, annexed hereto as Exhibit B are true and correct copies of defendant CHRISTENSEN's letter to one such travel agent, IBA Travel, and defendant COUPON CONNECTION's promotional materials distributed to travel agents.

40. As a result of defendants' tortious interference, AMERICAN has suffered damages in an amount in excess of \$10,000.

41. The foregoing actions of defendants were willful and malicious and AMERICAN is therefore entitled to an award of punitive or exemplary damages.

THIRD CLAIM FOR RELIEF

(Tortious Interference
Against All Defendants)

42. AMERICAN repeats the allegations of Paragraph 1 through 27, 29 through 33 and 37 through 39 with the same force and effect as if fully set forth herein.

43. As a further result of the foregoing, defendants wrongfully and intentionally interfered and continue to

interfere with AMERICAN's business and economic relationship with customers who defendants and their co-conspirators have induced to purchase AAdvantage travel awards from defendants instead of purchasing commercial tickets from AMERICAN. Defendants thereby caused and continue to cause AMERICAN to provide free and discount air travel, thus depriving AMERICAN of the opportunity to sell tickets to and derive revenues from such passengers. Hence, revenues that should properly have been received by AMERICAN for transporting such passengers have been and are wrongfully diverted to defendants.

44. As a further result of the foregoing, defendants wrongfully and intentionally interfered and continue to interfere with AMERICAN's business and economic relationship with its AAdvantage customers who comply with the rules of the AAdvantage program, when these customers seek to travel on AMERICAN, either by purchasing a ticket or by redeeming the AAdvantage awards they have earned, but cannot obtain tickets or services on AMERICAN because of passengers who travel on award tickets wrongfully secured through defendants and who produce no revenue to AMERICAN, occupying seats that AMERICAN has needed and continues to need to accommodate its AAdvantage customers. Hence, AMERICAN is deprived of the revenues it would receive by selling tickets to such AAdvantage customers, and/or the customer loyalty and resultant economic benefits the AAdvantage program was carefully crafted to ensure.

45. As a further result of the foregoing, defendants wrongfully and intentionally interfered and continue to interfere with AMERICAN's business and economic relationship with other customers who desire to fly on AMERICAN, who cannot obtain tickets or services on AMERICAN because passengers who travel on tickets secured through defendants' scheme and who produce no revenue to AMERICAN are occupying the seats AMERICAN needs to accommodate these customers. Hence,

AMERICAN is deprived of the ability to sell tickets and to derive revenue from these customers.

46. As a further result of the foregoing, defendants wrongfully and intentionally interfered with AMERICAN's business and economic relationship with its authorized travel agents who comply with the AAdvantage rules, by intentionally reducing said agents' opportunities to market tickets for travel on AMERICAN, thereby depriving AMERICAN of opportunities to sell tickets on its airline through such travel agents.

47. Defendants, and each of them, knowing of AMERICAN's valuable economic relationships as set forth herein, have willfully, intentionally, and improperly interfered with and disrupted these relationships by the improper means and scheme described above, all with the wrongful purpose and effect of converting to themselves economic benefits belonging to AMERICAN.

48. As a result of the foregoing intentional interference with AMERICAN's economic relations by defendants, and each of them, AMERICAN has been damaged in an amount in excess of \$10,000.

49. The foregoing actions of defendants were willful and malicious and AMERICAN is therefore entitled to an award of punitive or exemplary damages.

FOURTH CLAIM FOR RELIEF

(Conspiracy to Commit Fraud and
Aiding and Abetting Fraud Against All Defendants)

50. AMERICAN repeats the allegations of Paragraphs 1 through 27, 29 through 33, 37 through 39 and 43 through 47 with the same force and effect as if fully set forth herein.

51. AMERICAN alleges that, as more specifically set forth in Paragraphs 52 through 58, since at least 1986 defendants and others, individually and in combination

and conspiracy between and among themselves and sometimes acting through the Controlled Entities, have formulated, agreed upon, and carried out a common scheme to defraud AMERICAN of money and valuable services (a) by aiding and abetting and inducing AAdvantage members and others in fraudulently obtaining and redeeming AAdvantage awards; (b) by fraudulently procuring and offering for sale AAdvantage award certificates which may be redeemed for free and discount travel on AMERICAN; and (c) by advising the purchasers of such fraudulently obtained AAdvantage awards to make material misrepresentations to AMERICAN.

52. AMERICAN alleges that defendants and others, individually and in combination and conspiracy between and among themselves, have paid and continue to pay money to induce AAdvantage members fraudulently to obtain AAdvantage award certificates for sale to defendants by concealing from AMERICAN their intention to sell the AAdvantage certificates in violation of the AAdvantage rules. AMERICAN alleges that said transactions include, but are not limited to, those set forth in Exhibit C, which is expressly incorporated in this Paragraph as if set forth in full.

53. AMERICAN alleges that in furtherance of the foregoing scheme and unbeknownst to AMERICAN, defendants aided, assisted and induced AAdvantage members fraudulently to obtain AAdvantage award certificates to sell to defendants by instructing them to conceal from AMERICAN their intention to sell the certificates and by supplying said AAdvantage members with the names and travel plans of defendants' customers who were to purchase AAdvantage certificates and award tickets and instructing them to request AAdvantage certificates from AMERICAN as alleged herein.

54. AMERICAN, in reasonable reliance upon the above-described false and fraudulent representations, did issue the AAdvantage award certificates so requested.

55. AMERICAN alleges that defendants purchased and continue to purchase the fraudulently obtained AAdvantage award certificates and exchanged them or caused them to be exchanged and continue to exchange them and cause them to be exchanged for tickets for air transportation on AMERICAN; further, defendants resold and continue to resell such award certificates to travel agents and to potential customers of AMERICAN, in violation of the AAdvantage rules and without compensation to AMERICAN. American alleges that said sales include, but are not limited to, sales to the following individuals: Sharon Lombardo, in or about July 1987; Don Cotter, in or about July 1987; Laurel Sindelay, in or about July 1987; Deidre Gruendler, in or about July 1987; Tracy Peterson, in or about March 1987; Craig Joslyn, in or about March 1987; Armando Juarez, in or about March 1987; Norman Soule, on or about March 1988; and George Vitale, in or about April 1988.

56. AMERICAN alleges that defendants aided and assisted and continue to aid and assist, and induced and continue to induce, such purchasers of the fraudulently procured tickets to obtain transportation on AMERICAN by instructing them to conceal from representatives of AMERICAN the fact that they purchased said tickets. Annexed hereto as Exhibit C is a true and correct copy of TEXAS TRAVELER's instructions to its customers, which instruct them:

"[D]o not mention to any airline representative that you purchased this ticket. . . ."

Said materials advise the customer of the name and hometown of the AAdvantage member who procured the award upon which the customer's tickets are based, and warns the customer as follows:

"Please memorize this information for your protection. **DO NOT SHOW THIS CARD TO THE AIRLINE.**"

57. AMERICAN alleges that defendants further aided and assisted and continue to aid and assist, and induced and continue to induce, such purchasers of the fraudulently obtained tickets to obtain transportation on AMERICAN by instructing them to misrepresent to AMERICAN the manner in which they obtained their tickets—i.e., to state that they had received them as gifts, rather than the true fact that they were purchased—if questioned by an AMERICAN representative.

58. AMERICAN alleges, upon information and belief, that defendants have supplied some purchasers with fraudulently obtained tickets that were issued in names other than their own, and aided and assisted such purchasers in fraudulently obtaining air transportation on AMERICAN, by instructing them to misrepresent their identity to AMERICAN. Upon information and belief, defendants provided some such persons with false identification documents to present to AMERICAN representatives. AMERICAN alleges, as but one example of such wrongful conduct, that in or about June 1987 defendants aided and assisted passenger Peter Rozier of Mt. Sterling, Missouri in fraudulently obtaining air transportation on AMERICAN from St. Louis, Missouri to Honolulu by providing him with an AMERICAN ticket in the name of George Noga and an identification card bearing the name of George Noga but displaying Peter Rozier's photograph. AMERICAN alleges that TEXAS TRAVELER fraudulently obtained said ticket based upon an AAdvantage award certificate procured by and purchased from AAdvantage member George Noga and sold by TEXAS TRAVELER to Peter Rozier's father-in-law, William Prang.

59. As a result of the foregoing conspiracy to commit fraud, including defendants' actions in aiding and abetting and inducing fraud as described herein, defendants and their co-conspirators wrongfully caused AMERICAN to provide free or discount air transportation to passengers who were not entitled to such travel, and AMERI-

CAN lost the opportunity to sell tickets and services on its airline to those who purchased fraudulently obtained tickets from defendants and to its AAdvantage customers and other customers who could not secure seats on AMERICAN flights because they were reserved for purchasers of fraudulently obtained tickets. AMERICAN also lost the opportunity to sell tickets through travel agents who purchased fraudulently obtained tickets from defendants, as well as travel agents who comply with the AAdvantage rules and lose opportunities to sell legitimate tickets for AMERICAN.

60. As a result of the foregoing conspiracy to commit fraud, including defendants' wrongful actions in aiding and abetting fraud as described herein, AMERICAN has suffered damages in an amount in excess of \$10,000.

61. AMERICAN alleges, upon information and belief, that the foregoing actions of defendants were willful and malicious and AMERICAN is therefore entitled to an award of punitive or exemplary damages.

FIFTH CLAIM FOR RELIEF

(Unfair Competition Against All Defendants)

62. AMERICAN repeats the allegations of Paragraphs 1 through 27, 29 through 33, 37 through 39, 43 through 47 and 51 through 59 with the same force and effect as if fully set forth herein.

63. The defendants have been and are engaged in a business which is predicated on willful circumvention and violation of the AAdvantage rules and whose purpose is to misappropriate profits at AMERICAN's expense by improperly selling travel on AMERICAN flights to AMERICAN passengers without any compensation to AMERICAN.

64. AMERICAN alleges that defendants have operated and continue to operate said business by means of a pervasive pattern of dishonesty and unfair means as herein alleged and which includes the following wrongful acts:

- (a) Paying AAdvantage members to induce them to violate the AAdvantage rules.
- (b) Inducing AAdvantage members to conceal material facts from AMERICAN, which concealment is indispensable to defendants' unlawful scheme.
- (c) Selling AAdvantage awards, redeemable for travel on AMERICAN flights, in violation of the AMERICAN AAdvantage rules.
- (d) Inducing and directing purchasers of the wrongfully-sold AMERICAN awards to conceal the source of the tickets, and if necessary to lie in response to AMERICAN's inquiries and thereby avoid detection, all of which is essential to defendants' campaign to misappropriate revenues from AMERICAN based on systematic violations of the AAdvantage rules.
- (e) Purchasing and reselling AAdvantage certificates that have been obtained based upon mileage credits stolen from AMERICAN.

65. The foregoing pattern of unfair and dishonest conduct and misappropriation constitutes unfair competition.

66. As a result of defendants' wrongful conduct AMERICAN has suffered damages in excess of \$10,000.

67. The foregoing actions of defendants were willful and malicious and AMERICAN is therefore entitled to an award of punitive or exemplary damages.

SIXTH CLAIM FOR RELIEF

(Pattern of Unlawful Activity Violations Against CARLSON, BRIGGS, BAUMAN and CHRISTENSEN)

68. AMERICAN repeats the allegations of Paragraphs 1 through 27, 29 through 33, 37 through 39, 43 through

47, 51 through 59 and 63 through 65 as though fully set forth herein.

69. This claim arises under the Pattern of Unlawful Activity Act ("PUAA"), Utah Code Ann. §§ 76-10-1601, *et seq.*, and particularly Utah Code Ann. § 76-10-1605.

70. Defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN are each a "person" capable of holding a legal or beneficial interest in property within the meaning of Utah Code Ann. § 76-10-1602(4).

71. COUPON CONNECTION was and is a partnership in continuing operation and an "enterprise" within the meaning of Utah Code Ann. § 76-10-1602(2).

72. PLATINUM was and is a corporation in continuing operation and an "enterprise" within the meaning of Utah Code Ann. § 76-10-1602(2).

73. TEXAS TRAVELER was and is a corporation in continuing operation and an "enterprise" within the meaning of Utah Code Ann. § 76-10-1602(2).

74. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, with specific intent to defraud AMERICAN, in addition to acquiring AAdvantage awards and certificates by wrongly inducing AAdvantage members to sell their award certificates to them as alleged herein, also acquired AAdvantage award certificates from Gayle Schreier and Irwin Schreier of Tulsa, Oklahoma, who had obtained such certificates through computer fraud, theft and deception, and who have been indicted in the Northern District of Oklahoma as a consequence of their unlawful conduct. These individuals are hereinafter referred to as "indicted individuals."

75. AMERICAN alleges that the indicted individuals, with specific intent to defraud AMERICAN, through an elaborate and sophisticated scheme:

- (a) Supplied AMERICAN with false and fraudulent information such as fictitious names and addresses for the purpose of inducing AMERICAN to issue AAdvantage account numbers for accounts which defendants would control. Said accounts include, but are not limited to, those set forth in Exhibit D, which is expressly incorporated in this Paragraph as if set forth in full.
- (b) Unlawfully accessed AMERICAN's computer system by utilizing the personal computer access code of an authorized AMERICAN travel agent or agents, for the purpose of altering passenger records so as to include false and fraudulent information. Specifically, passenger records of AMERICAN's non-AAdvantage passengers were altered in one or more of the following ways: an AAdvantage account number controlled by the indicted individuals was added; a mail drop controlled by the indicted individuals was added; the name or other identifying information of a bona fide passenger was altered to correspond to the name appearing on an AAdvantage account controlled by the indicted individuals. The passenger records so altered include, but are not limited to, those set forth in Exhibit E, which is expressly incorporated in this Paragraph as if set forth in full.
- (c) Utilized the stolen mileage credits by submitting to AMERICAN AAdvantage award claim forms completed with AAdvantage numbers for fraudulent accounts, AAdvantage mileage that was not really flown, and the fictitious AAdvantage members' signatures. Defendants submitted these forms with the intention and for the purpose of inducing AMERICAN to mail to the indicted individuals at mail drop addresses certificates redeemable for free and discount travel

on AMERICAN. The fraudulent mail drops that the indicted individuals used and supplied to AMERICAN include, but are not limited to, those set forth in Exhibit F, which is expressly incorporated in this Paragraph as if set forth in full.

- (d) Redeemed and caused to be redeemed the fraudulently acquired award certificates for tickets on AMERICAN flights, and marketed and sold the award certificates to travel agents and coupon brokers including defendants, and to customers and potential customers of AMERICAN, without compensation to AMERICAN and in violation of the AAdvantage rules.

76. AMERICAN alleges that between approximately September 1, 1987 and March 1, 1988, defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, with specific intent to defraud AMERICAN, paid the indicted individuals more than \$50,000 for numerous AAdvantage certificates which were based on stolen AMERICAN mileage credits.

77. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, received the certificates knowing them to be based on AMERICAN mileage credits they knew to be stolen or believed probably had been stolen, within the meaning of Utah Code Ann. § 76-6-408.

78. AMERICAN alleges, upon information and belief, that, on more than three separate occasions, defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, with specific intent to defraud AMERICAN, received and disposed of the AAdvantage certificates that were based on stolen AMERICAN mileage credits, in violation of Utah Code Ann. § 76-6-408.

79. The violations of Utah Code Ann. § 76-6-408 set forth herein each were related to and in furtherance of the scheme of the indicted individuals and defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN to defraud AMERICAN, and had and continue to have the same or similar purposes, results, participants and/or methods of commission, constituting continuing unlawful conduct and forming a pattern of unlawful activity within the meaning of Utah Code Ann. § 76-10-1602(3).

80. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, acquired and/or maintained interests in and control of PLATINUM through the pattern of unlawful activity described herein.

81. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, were associated with PLATINUM from at least approximately September 1, 1987 until March 1, 1988 and conducted and participated in PLATINUM's activities through the pattern of unlawful activity described herein.

82. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, acquired and/or maintained interests in and control of COUPON CONNECTION through the pattern of unlawful activity described herein.

83. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, were associated with COUPON CONNECTION from at least approximately September 1, 1987 until March 1, 1988 and conducted and participated in COUPON CONNECTION's activities through the pattern of unlawful activity described herein.

84. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN

and CHRISTENSEN, and each of them, acquired and/or maintained interests in and control of TEXAS TRAVELER through the pattern of unlawful activity described herein.

85. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, were associated with TEXAS TRAVELER from at least September 1, 1987 until March 1, 1988 and conducted and participated in TEXAS TRAVELER's activities through the pattern of unlawful activity described herein.

86. As a direct and proximate result of the above-described violations of Utah Code Ann. § 76-10-1603(2) and (3), AMERICAN has been injured in its business and property in an amount in excess of \$10,000, and is entitled to two times its damages, plus costs including reasonable attorneys fees, pursuant to Utah Code Ann. § 76-10-1605.

SEVENTH CLAIM FOR RELIEF

(Racketeering Influenced and Corrupt Organizations Violation Against CARLSON, BRIGGS, BAUMANN and CHRISTENSEN)

87. AMERICAN repeats the allegations of Paragraphs 1 through 27, 29 through 33, 37 through 39, 43 through 47, 51 through 59, 63 through 65 and 69 through 85 as though fully set forth herein.

88. This claim arises under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq.*, and particularly 18 U.S.C. § 1964(c).

89. Defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN are each a "person" capable of holding a legal or beneficial interest in property within the meaning of 18 U.S.C. § 1961(3).

90. PLATINUM was at all relevant times an "enterprise" within the meaning of 18 U.S.C. § 1961(4), in

continuing operation, which is engaged in, and whose activities affect, interstate commerce.

91. TEXAS TRAVELER was at all relevant times an "enterprise" within the meaning of 18 U.S.C. § 1961(4), in continuing operation, which is engaged in, and whose activities affected, interstate commerce.

92. COUPON CONNECTION was at all relevant times an "enterprise" within the meaning of 18 U.S.C. § 1961(4), in continuing operation, which is engaged in, and whose activities affected, interstate commerce.

93. AMERICAN alleges that in furtherance of the scheme to defraud described herein, defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, conspired and combined with the indicted individuals, who, in furtherance of the conspiracy, committed at least two acts indictable under 18 U.S.C. § 1343, including:

Between 1986 and February 1, 1988 with the specific intent to defraud AMERICAN, making or causing to be made at least 500 telephone-linked computer communications from Tulsa, Oklahoma to AMERICAN's SABRE computer facilities in Tulsa, Oklahoma, transmitting fraudulent alterations to existing passenger name records including false names, addresses and AAdvantage numbers, for the purpose of stealing mileage credits from AMERICAN and transferring them to defendants' control as set forth in Paragraph 75 the false information so entered into the computer was thereafter transmitted by wire into interstate commerce to the AAdvantage computer in Fort Worth, Texas. Such transmissions include, but are not limited to, those set forth in Exhibit E, which is expressly incorporated in this Paragraph as if set forth in full.

94. AMERICAN alleges that in furtherance of the scheme to defraud described herein, defendants CARL-

SON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, combined and conspired with the indicted individuals, who, in furtherance of the conspiracy, committed at least two acts indictable under 18 U.S.C. § 1341, including:

- (a) Between 1986 and February 1, 1988, with the specific intent to defraud AMERICAN, causing at least 500 fraudulent AAdvantage award claim forms to be mailed to AMERICAN at the AMERICAN post office box in Dallas/Fort Worth listed on the AAdvantage Awards Claim, which mailings were intended to induce AMERICAN to issue AAdvantage award certificates to defendants based upon stolen mileage credits as set forth in Paragraph 75.
- (b) Between 1986 and February 1, 1988, with the specific intent to defraud AMERICAN, causing AMERICAN to mail at least 500 AAdvantage award certificates based upon stolen mileage credits to mail drops including but not limited to those set forth in Exhibit F, which is expressly incorporated in this Paragraph as if set forth in full, as set forth in Paragraph 75.

95. AMERICAN alleges, upon information and belief, that in furtherance of the scheme to defraud described herein defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, conspired and combined with the indicted individuals, who in furtherance of the conspiracy, committed additional acts indictable under 18 U.S.C. §§ 1341 and 1343.

96. Each separate use of the United States mails and of interstate telephone and other wire communications in furtherance of the scheme of the indicted individuals and defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN to defraud AMERICAN as described herein constitutes an act of racketeering activity within the meaning of 18 U.S.C. § 1961(1)(B).

97. The violations of 18 U.S.C. §§ 1341 and 1343 set forth in Paragraphs 93-95 each were related to and in furtherance of the scheme of the indicted individuals and defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN to defraud AMERICAN, and constitute continuous and related racketeering activity forming a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5).

98. AMERICAN alleges that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, acquired and/or maintained interests in and control of PLATINUM through the pattern of racketeering activity described herein.

99. AMERICAN alleges that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, were associated with PLATINUM from at least 1986 until February 1, 1988 and conducted and participated in PLATINUM's activities through the pattern of racketeering activity described herein.

100. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, acquired and/or maintained interests in and control of COUPON CONNECTION through the pattern of racketeering activity described herein.

101. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, were associated with COUPON CONNECTION from at least approximately 1986 until February 1, 1988, and conducted and participated in COUPON CONNECTION's activities through the pattern of racketeering activity described herein.

102. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, acquired and/or

maintained interests in and control of TEXAS TRAVELER through the pattern of racketeering activity described herein.

103. AMERICAN alleges, upon information and belief, that defendants CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, and each of them, were associated with TEXAS TRAVELER from at least 1986 until February 1, 1988, and conducted and participated in TEXAS TRAVELER's activities through the pattern of racketeering activity described herein.

104. As a direct and proximate result of the above-described violations of 18 U.S.C. § 1962(b) and (c), AMERICAN has been injured in its business and property in an amount in excess of \$10,000, and is entitled to three times its damages, plus costs including a reasonable attorney's fees, pursuant to 18 U.S.C. § 1964(c).

EIGHTH CLAIM FOR RELIEF

(Injunctive Relief Against all Defendants)

105. AMERICAN repeats the allegations of Paragraphs 1 through 27, 29 through 33, 37 through 39, 43 through 47, 51 through 59, 63 through 65, 69 through 85, and 88 through 103 as though fully set forth herein.

106. AMERICAN alleges that defendants, and each of them, are now acting and will continue to act in furtherance of the schemes alleged herein. More particularly, AMERICAN believes that defendants, sometimes acting through the Controlled Entities, are continuing and will continue to solicit AAdvantage members to sell their AAdvantage mileage award certificates and tickets in violation of the AAdvantage rules; they are continuing and will continue to solicit passengers to buy such AAdvantage mileage award certificates and tickets in violation of the AAdvantage rules; and they are continuing and will continue to encourage the passengers to conceal and misrepresent the source of their AAdvantage tickets.

107. The actions of defendants, and each of them, as herein described, have caused, and are continuing to cause, irreparable harm to AMERICAN. Specifically, defendants' actions deprive AMERICAN of the very economic benefits the AAdvantage program was crafted to ensure. They also adversely affect AMERICAN's relationships with its AAdvantage member-customers and other customers, AMERICAN's ability to develop customer loyalty, and AMERICAN's reputation in the travel industry.

108. The actions of defendants, and each of them, as herein described, have caused and are continuing to cause AMERICAN to suffer damages in an amount which, particularly in light of defendants' efforts to conceal their misconduct, is extremely difficult to calculate and for which money damages will not provide an adequate remedy. AMERICAN has no adequate remedy at law.

109. For the foregoing reasons, AMERICAN is entitled to preliminary and financial injunctive relief against defendants, and each of them, as follows:

- (a) Prohibiting defendants, and each of them, acting directly or indirectly or acting through entities which they control directly or indirectly, from soliciting or purchasing AAdvantage mileage certificates and/or tickets from AAdvantage members;
- (b) Prohibiting defendants, and each of them, acting directly or indirectly or acting through entities which they control directly or indirectly, from offering for sale free or reduced rate transportation based in whole or in part on AAdvantage award mileage or certificates; and
- (c) Prohibiting defendants, and each of them, acting directly or indirectly or acting through entities which they control directly or indirectly,

from issuing or causing to be issued tickets for free or reduced rate transportation based in whole or in part on AAdvantage mileage or certificates.

Prayer for Relief

WHEREFORE, plaintiff AMERICAN AIRLINES, INC. requests that judgment be entered as follow:

1. Awarding AMERICAN damages as against all defendants, jointly and severally, in amount in excess of \$10,000, on the First Claim for Relief.
2. Awarding AMERICAN damages as against all defendants, jointly and severally, in an amount in excess of \$10,000, on the Second Claim for Relief.
3. Awarding AMERICAN damages as against all defendants, jointly and severally, in an amount in excess of \$10,000, on the Third Claim for Relief.
4. Awarding AMERICAN damages as against all defendants, jointly and severally, in an amount in excess of \$10,000, on the Fourth Claim for Relief.
5. Awarding AMERICAN damages as against all defendants, jointly and severally, in an amount in excess of \$10,000, on the Fifth Claim for Relief.
6. Awarding AMERICAN two times an amount in excess of \$10,000 against CARLSON, BRIGGS, BAUMANN and CHRISTENSEN jointly and severally, on the Sixth Claim for Relief.
7. Awarding AMERICAN three times an amount in excess of \$10,000 as against CARLSON, BRIGGS, BAUMANN and CHRISTENSEN, jointly and severally, on the Seventh Claim for Relief.
8. Awarding AMERICAN punitive damages as against all defendants, jointly and severally, in the amount of \$5 million.

9. Granting an injunction against the defendants and all those acting by, through, or in concert with them, enjoining them from engaging, directly or indirectly, in the purchase, sale, barter or brokering of plaintiff's frequent flyer bonus mileage, certificates, or tickets based on such bonuses and certificates.

10. Awarding AMERICAN its reasonable attorney fees herein.

11. Awarding AMERICAN its costs of suit herein.

12. Granting AMERICAN such other and further relief as is just and proper.

Dated: August 31, 1988

SUITTER AXLAND ARMSTRONG
& HANSON

LEROY S. AXLAND, ESQ.

WEIL, GOTSHAL & MANGES
CARLA A. HILLS, ESQ.
RICHARD A. ROTHMAN, ESQ.

By /s/ Leroy S. Axland
Attorneys for Plaintiff
American Airlines, Inc.

Plaintiff's Address:

4200 American Boulevard 4C27
Ft. Worth, Texas 76155

EXHIBIT A

COUPON
CONNECTION

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EXHIBIT B

ORTHOPEDIC TECHNOLOGY INC.

ORTHOPEDIC VENTILATION INC.

10101 South State Street
Sandy, Utah 84070

VENT-A-CAST

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President • ResearchistRobert J. Baumann
ChairmanOwner/General Manager
I B A Travel
3330 S. 700 E.
Salt Lake City, Utah

Re: Discount Airfare.

This letter is to introduce to you a very special money-making offer. I'm a business consultant specializing in negotiations and project viability studies. I also manage businesses; hence, the odd stationery.

I was recently retained to move some excess first class upgrades on American Airline. These have very large profit structures built in for anyone who wants to take advantage of this offering. The pertinent facts are as follows:

1. Each certificate is good for round trip upgrade to first class on any domestic, United States, Caribbean, Hawaii, or Mexican destination served by American Airline.
2. Each certificate is transferable but takes one to two weeks for the airline to process and return, which my client is willing to do as part of the deal.
3. These certificates are good through 5/31/86.

4. The best coach fare to say—Montego Bay, Jamaica is currently \$ 467.00
First class fare is 1976.00
meaning the certificate is worth 1509.00
in savings which if you wanted you could charge your customers.

5. Your cost for these certificates while they last is only \$110.00, which means you can sell them to your clients for whatever you can get out of them or for only \$150.00 and still make \$40.00 profit plus the airline pays you \$20.00 to ticket these certificate making a total of \$60.00 profit per certificate, *minimum!*

I hope this offer interests you and that we can start a mutually profitable relationship. I quite frequently have these types of discount airfares and would prefer to move them locally instead of, as in the past, to New York, Los Angeles, and Chicago. If you are interested call now as I can only offer these for as long as they last. Thanks for your time and interest.

Profitably Yours,

/s/ Randy Christensen
RANDY CHRISTENSEN
President

COUPON CONNECTION

From Here To There For Less

TRAVEL AGENTS

Let COUPON CONNECTION add a valuable tool to aid you in dealing with your established clients & attracting new customers!

SEND THEM FIRST CLASS TO MANY U.S. & CARIBBEAN
DESTINATIONS,

for \$150.00 more than any available COACH fare. Pass this LOW price along to impress and endear your clients or mark it up for EXTRA PROFITS to you and your agency.

These upgrades require a minimum of 2 weeks to be issued in your clients name.

COUPON CONNECTION ALSO HAS LOW
FIRST CLASS AND COACH ROUND TRIP
PRICES!

See the attached mailer we are sending to our regular customers for price examples, in most cases we can discount these prices to a wholesale level for a savings of approximately \$25.00 more.

Again you have the flexibility to sell these at any price the traffic will bear for added profitability and to make you a hero with your customers in the competitive travel marketplace.

Contact us to find out how what we can do can help you with what you do.

Or we will be giving you a call in the near future to introduce ourselves and see if we can be of service.

EXHIBIT C

EXAMPLES OF AWARDS PURCHASED FROM AADVANTAGE MEMBERS

<u>AAdvantage Member</u>	<u>AAdv. #</u>	<u>Broker</u>	<u>Date</u>
Catherine Martin	X116892	Texas Traveler	April 1988
Bruce Roberson	S734130	Texas Traveler	March 1988
Gary Mike Rockhold	KR39062	Texas Traveler	February 1988
George Noga	H283304	Texas Traveler	June 1987
Sabrina L. Spangler	W474954	Texas Traveler	June 1986
Charles Deloach	U998816	Coupon Connection	1987
Mohsen Khusrowshaki	AK17952	Coupon Connection	1987
Craig W. Schaeffer	F319264	Coupon Connection	1987

EXHIBIT D

AADVANTAGE ACCOUNTS

<u>AAdvantage Number</u>	<u>Purported AAdvantage "Member"</u>	<u>Mail Drop</u>
KF43564	W. Wilson	1515 South Quaker, #11 Tulsa Oklahoma
KF43588	G. Wilson	Same as above
KF43576	R. Wilson	Same as above
KF43590	J. Wilson	Same as above
KE75892	Stephen Adams	Same as above
KE75880	Michael Boden	Same as above
KE75830	Nathan Cupp	Same as above
KE75866	Sylvia Cupp	Same as above
KE75920	Edna Davis	Same as above
LU78890	Magdalena Terrein	Same as above
LH53726	A. Simonini	Same as above
LJ49506	Judith Jossett	Same as above
LU78876	Claudio Terrein	Same as above
KV75994	T. Smith	Irwin Schreier, d/b/a Environment Associates Box 110 5147 South Harvard Tulsa, Oklahoma
KV44300	A. Smith	Same as above
KV76190	H. Smith	Same as above
KV75878	G. Johnson	Same as above
KV44222	F. Johnson	Same as above
KV76242	K. Johnson	Same as above
KV44260	J. A. Jones	Same as above
KV76024	N. Jones	Same as above
KV76152	B. Jones	Same as above

EXHIBIT E

PNR ALTERATIONS

<u>Date of Trans- mission</u>	<u>Original Passenger Name</u>	<u>Passenger Name Changed To</u>	<u>AAdvantage # Added</u>	<u>AAdvantage "Member"</u>
02-16-87	Sheila Jones/ Richard Jones	R. Jones	KV17650	R. Jones 3511 S. Toledo Tulsa, OK
		P. Jones	KV77564	P. Jones 7955 E. 50th Suite 1361 Tulsa, OK
01-15-87	Ms. T. Jones	T. Jones	KV17674	T. Jones 3511 S. Toledo Tulsa, OK
01-17-87	Mr. LaWayne Jones	S. Wayne Jones	KV17662	S. Jones 3511 S. Toledo Tulsa, OK
02-17-87	David Jones	B. Jones	KV17686	B. Jones 3511 S. Toledo Tulsa, OK
02-15-87	Richard Crow	M. Wise	6361418	Mike Wise 3511 S. Toledo Tulsa, OK
02-01-87	Kathleen Johnson	K. Johnson	KV76242	K. Johnson 5147 S. Harvard Tulsa, OK
04-29-87	Donald Jones Patricia Jones	B. Jones	KH12764	H. Jones 2421 W. Pratt Blvd., Apt. 1072, Chicago, ILL
		P. Jones	KV77564	P. Jones 7955 E. 50th Suite 1361 Tulsa, OK
05-13-87	Essie Jones	E. Jones	KH12790	E. Jones 2421 W. Pratt Blvd., Apt. 1072, Chicago ILL

Date of Trans- mission	Original Passenger Name	Passenger Name Changed To	AAAdvantage # Added	AAAdvantage "Member"
06-22-87	Mr./Mrs. Schweizer	C. Jones	KH12804	C. Jones 2421 W. Pratt Blvd., Apt. 1072, Chicago ILL
		A. Jones	KU44260	A. Jones 5147 S. Harvard Suite 110 Tulsa, OK
06-22-87	E. Vatter	D. Jones	KH12816	D. Jones 2421 W. Pratt Blvd., Apt. 1072, Chicago ILL
06-22-87	Mr./Mrs. Decampe	T. Jones	KH12752	T. Jones 2421 W. Pratt Blvd., Apt. 1072, Chicago ILL
		C. Johnson	KH47972	C. Johnson 13230 Addison Sherman Oaks, California
01-17-87	Mrs. C. Smith/ MMR/GMR	H. Smith	KV76190	H. Smith 5147 S. Harvard Tulsa, OK
		C. Smith	KV17636	C. Smith 2027 S. Garnett Suite 101 Tulsa, OK
		N. Smith	KH33380	Nancy Smith P.O. Box 472244 Tulsa, OK
02-08-87	Wilber Smith	T. Smith		T. Smith 5147 S. Harvard Tulsa, OK
06-22-87	Mr. Reti	N. Jones	KV76024	N. Jones 5147 S. Harvard Tulsa, OK

Date of Trans- mission	Original Passenger Name	Passenger Name Changed To	AAAdvantage # Added	AAAdvantage "Member"
09-06-87	Mr. J. Metter	B. Jones	KV76152	B. Jones 5147 S. Harvard Tulsa, OK
01-19-87	Jennifer Johnson/ Lauren Nicholas	G. Johnson	KV75878	G. Johnson 5147 S. Harvard Tulsa, OK
		T. Johnson	KF43654	T. Johnson 28 W. 75th Suite 5A New York, NY
		F. Johnson	KU44222	F. Johnson 5147 S. Harvard Tulsa, OK
04-19-87	Kim Johnson	F. Johnson	KU44222	F. Johnson 5147 S. Harvard Tulsa, OK

EXHIBIT F
MAIL DROPS

Mail Drop	Established By
Retailers Program Design—Irwin Schreier/ Retailers Program 7955 East 50th Street Tulsa, Oklahoma	Irwin Schreier
Environmental Associates 5147 South Harvard Tulsa, Oklahoma	Irwin Schreier
International Gold Traders 2421 West Pratt Boulevard Suite 1072 Chicago, Illinois	Irwin Schreier
South African Platinum Associates 7739 East Broadway #146 Tuscon, Arizona 85710	Irwin Schreier
International Silver Consultants 4815 Trousdale Drive Nashville, Tennessee 37270	Irwin Schreier
Hastings Limited 5130 East Charleston Boulevard Suite 5-F Las Vegas, Nevada	Irwin Schreier
International Gold Consultants 1700 Stumpf Boulevard Suite 602 Gretna, Louisiana 70056	Irwin Schreier
Pollution Control Associates 17336 Harper Suite 10 Detroit, Michigan 48224	Irwin Schreier
Jones, Brown & Johnson Associates 3 Golf Center Suite 219 Boffman Estates, Illinois 60195	Irwin Schreier

South African Gold Consultants 110 Pacific Avenue Suite 216 San Francisco, California 94111	Irwin Schreier
German Import Associates 6620 Seidell Suite 170 San Antonio, Texas 78209	Irwin Schreier
Irwin Engineering Associates 2035 East 3300 South Suite 349 Salt Lake City, Utah 84109	Irwin Schreier
Goldman Importing Company Suite 315 12311 North East Gilsan Portland, Oregon	Irwin Schreier
Kruger, Goldman & Stein 7320 Southwest Bear-Hills Highway Suite 155 Portland, Oregon 97225	Irwin Schreier
Summit Engineering Associates Suite 173 5555 Zuni Road Southeast Albuquerque, N Mexico 87125 AT977/14013.10/3-1	Irwin Schreier

IN THE
DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX

Civil No. 1988/177

P.S. TUCKER,

Plaintiff,

vs.

AMERICAN AIRLINES, INC.,

Defendant.

ORDER OF DISMISSAL

THIS MATTER is before the Court on motion of defendant American Airlines, Inc. to dismiss for *forum non conveniens*. Plaintiff P.S. Tucker failed to oppose the motion and, thus, we may deem the matter conceded pursuant to V.I. Code Ann. tit. 5, App. V Rule 6(i). We will, nevertheless, analyze briefly the basis for American's claim of *forum non conveniens*.¹

The Virgin Islands have codified the common law doctrine of *forum non conveniens* at V.I. Code Ann. tit. 5, § 4905.

When the court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any conditions that may be just.

Id. In *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), the Supreme Court told us what factors should guide our discretion.

¹ There being no alternative federal forum, a motion to transfer, 28 U.S.C. § 1404, would have no basis.

If the combination and weight of factors requisite to given results are difficult to forecast or state, those to be considered are not difficult to name. An interest to be considered, and the one likely to be most pressed, is the private interest of the litigant. Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforceability of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, "vex," "harass," or "oppress" the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

Factors of public interest also have place in applying the doctrine. Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. . . . There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.

Id. at 508-09.

Having considered American's motion we make the following findings.

1. Tucker seeks class certification to sue on behalf of all members of the AAdvantage program with similar claims who reside across the United States.

Thus, Texas would be a more central location in contrast to the remoteness of the Virgin Islands.

2. American's headquarters and its AAdvantage program office are located in Texas.

3. The program was conceived, implemented and is currently maintained in the Texas offices.

4. The alleged contract was entered into in either Texas or Connecticut.

5. Virtually all documents and witnesses necessary to the litigation are located in Texas.

6. Texas conflict-of-law laws are similar to that of the Virgin Islands. Restatement (Second) of Conflict of Laws, § 188 (1971); *Duncan v. Cessna Aircraft Co.*, 665 S.W. 2d 414 (Tex. 1984). Thus, regardless of whether the suit is prosecuted here or in Texas, it appears that Texas law will be applied.

7. A Texas state court would be in a better position to apply Texas law, than a federal district court in the Virgin Islands.

8. Texas state law on class certification mirrors Fed.R.Civ.P. 23 and, thus, Tucker's expectations in this regard should be met by a Texas court. Tex.R. Civ.P. Ann r. 42 (Vernon 1988); *Huddleston v. Western Nat'l Bank*, 577 S.W. 2d 778, 780 (Tex. Civ. App. 1979).

9. American questions Tucker's status as a Virgin Islands resident.²

It is apparent from the above that Texas offers an adequate alternative forum; that litigation in Texas will be

² American states that Tucker's mailing address for the AAdvantage program has been and continues to be Connecticut. Aff. of F. DiNuzzo, dated August 18, 1988, at 2. Tucker also does not have a Virgin Islands telephone listing, or any listing in the local property records. Aff. of E. Moore, dated August 15, 1988.

more convenient to both the defendant American and the potential plaintiff class of AAdvantage members; and that the law of the alternative forum is no less favorable to Tucker and the potential class, than the law of the chosen forum but is essentially the same.

Although the Court should be hesitant to disturb the plaintiff's choice of forum,³ the balance of interests in this case clearly lies with American. American disputes Tucker's claimed status as a resident of the Virgin Islands. If she is not, the only reason for filing suit in the Virgin Islands, appears to be to take advantage of our unique subject-matter jurisdiction by which the District Court of the Virgin Islands entertains lawsuits that could ordinarily only be heard in a state court in the continental United States. Thus, American alleges that Tucker engaged in forum shopping to file suit in a federal district court. Why such great efforts should be made to obtain the attention of a federal court, we can't understand, but we need not decide the allegations regarding Tucker's residency status or forum shopping. The "center of gravity",⁴ of the plaintiff's claim and the equities clearly lie with having a Texas state court determine the merits, rather than a court as far removed from all parties, except Tucker, and all the evidence, as is the District Court of the Virgin Islands.

The premises considered, now therefore it is

ORDERED:

THAT the defendant's motion for dismissal is **GRANTED** and the plaintiff's complaint shall be **DISMISSED WITHOUT PREJUDICE**.

³ *Gilbert*, 330 U.S. at 508.

⁴ *Firmani v. Clarke*, 325 F. Supp. 689, 692 (D. Del. 1971).

DATED this 9th day of September, 1988.

ENTER:

/s/ David V. O'Brien
DAVID V. O'BRIEN
Chief Judge

ATTEST:

Orinn Arnold, Clerk

by: /s/ [Illegible]
Deputy Clerk

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT,
CHANCERY DIVISION

No. 88 CH 0007554

MYRON (MIKE) WOLENS, ALBERT J. GALE, R. CRAIG
ZAFIS, BRET MAXWELL and ROBERT NELSON, individ-
ually and on behalf of all others similarly situated,
Plaintiffs;

v.

AMERICAN AIRLINES, INC., a foreign corporation,
Defendant.

consolidated with:

No. 89 CH 119

Honorable Arthur L. Dunne

P.S. TUCKER, on behalf of herself and all others
similarly situated,
Plaintiffs,

v.

AMERICAN AIRLINES, INC., a foreign corporation,
Defendant.

ORDER

This cause coming to be heard on Defendant American Airlines' Motion For Certification of Question For Interlocutory Appeal, pursuant to Supreme Court Rule 308(a), the Court being fully advised in the premises;

The Court finds that the Court's Memorandum Opinion and Order dated March 20, 1989 involves questions of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of this litigation.

The Court therefore certifies the following question for interlocutory appeal: whether plaintiffs' claims are preempted by the Federal Aviation Act of 1958, as amended, 49 U.S.C. §§ 1301-1557, and by the federal regulations promulgated thereunder, and precluded under the Commerce Clause of the United States Constitution.

Dated: 3-25-89

Entered: /s/ [Illegible]
Judge

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

No. 89-0918

MYRON (MIKE) WOLENS, *et al.*,
Plaintiffs-Appellees,
v.

AMERICAN AIRLINES, INC., a foreign corporation,
Defendant-Appellant.

P.S. TUCKER, *et al.*,
Plaintiff-Appellee.
v.

AMERICAN AIRLINES, INC., a foreign corporation,
Defendant-Appellant.

ORDER

This cause coming on to be heard on the application of defendant-appellant AMERICAN AIRLINES, INC., for leave to appeal pursuant to Supreme Court Rule 308 from the order of the Circuit Court of Cook County denying American Airlines' motions to dismiss the complaints in the above-named consolidated actions and the answer in opposition to said application.

IT IS ORDERED that the application be and is hereby granted;

IT IS FURTHER ORDERED that the briefing schedule be as set forth in Supreme Court Rule 343.

[June 7, 1989]

/s/ Charles G. Freeman
Justice

/s/ [Illegible]
Justice

/s/ William S. White
Justice

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 13th day of September, 1989

Docket 46188, 46192

Complaints of

AMERICAN ASSOCIATION OF DISCOUNT TRAVEL BROKERS
to American Airlines Passenger Tariffs,
CAB Nos. 465 and 409

ORDER

By a complaint filed March 17, 1989, in Docket 46188, the American Association of Discount Brokers ("complainants") request denial of the Special Tariff Permission ("STP") application filed by American Airlines on March 13, 1989, and rejection, or suspension and investigation, of the proposed tariff revisions.¹ By a similar complaint filed March 21, 1989, in Docket 46192, the complainants request rejection, or suspension and investigation, of American's proposed revisions to passenger tariff CAB No. 409, filed March 14, 1989, on statutory notice. American filed a consolidated answer to the complaints on March 27, 1989.

¹ The STP application, for permission to file revisions to American's passenger tariff CAB No. 465 for effectiveness on one day's notice, was approved on March 17, 1989. By a letter to the Director, Office of International Aviation, dated March 20, 1989, the complainants request rescission of that action. A copy of the letter, which American has addressed on its merits, has been placed in Docket 46188 and will be treated as an amendment to the complaint, requesting supplemental relief.

The complaints challenge the proposed revisions to American's frequent flyer bonus award structure and description of its "AAdvantage" program's principal features. Tariff CAB No. 409 covers transportation between points in the U.S.A. and Canada, while tariff CAB No. 465 covers transportation between points in the U.S.A./Canada and points in other countries.

According to the complainants, both the STP application and the underlying tariffs violate statutory filing requirements and DOT procedures, primarily because the tariffs allude to AAdvantage program rules that are not set forth in the tariff. Complainants challenge the tariffs for providing also that American may change the program rules "at any time." The complainants argue that this "incorporation by reference" is inconsistent with the filing and notice requirements of section 403 of the Act, with the exclusive and binding nature of filed tariffs under established judicial doctrine, and with the statutory scheme that charges DOT with the duty of approving tariff changes.²

In response, American asserts that the complaints misconstrue the tariffs. Rather than "incorporating" the AAdvantage rules by reference, American argues, the tariffs expressly provide that the program's terms are a matter of private contract established outside the tariff by direct notice and assent. It contends that the program

² The complaints also allege the following: that incorporation by reference violates the requirements of tariff completeness and specificity in § 221.38 of the Department's regulations; that tariff CAB No. 465 contains domestic tariff information in violation of the statutory "sunset" provision, section 1601(a)(2)(A), and § 399.40 of the Department's regulations; and that American has not met the criteria in § 221.190 for grant of an STP application.

In a subsequent complaint filed in Docket 46280, the complainants challenge frequent flyer program rules filed in tariffs by Continental Airlines. The complaint raises additional issues of State laws and Federal preemption. The issues raised in that docket will be dealt with by separate order.

rules themselves, as distinguished from the schedule of bonus award levels, are not required to be filed but may be provided in the tariff for clarification purposes. American denies that the revisions violate any procedural requirements or tariff policies.

American's interpretation of the tariffs is correct. The revisions to the award schedule were properly granted STP approval, and the description of the AAdvantage program rules filed with them does not violate the statute or any applicable regulatory procedures or policies.

The complainants focus on paragraphs (12) and (13) of the "general terms and conditions for all awards" contained in section 3 of the tariff.³ By its own terms, paragraph (12) acknowledges that the tariff does not contain "a complete recitation of the rules of the AAdvantage program." Rather, paragraph (12) refers to other sources for "direct notice" of program rules and restrictions in-

³ The complete provisions read as follows:

(12) This tariff does not establish the rules, regulations, conditions and limitations of the AAdvantage program, or any right to acquire benefits under the program. Further, a complete recitation of the rules of the AAdvantage program is not contained herein. American provides direct notice to AAdvantage members of the rules, regulations, conditions and limitations of the AAdvantage program in materials sent to members, including the AAdvantage Program brochure, the AAdvantage Newsletter, the AAdvantage Claim Form and the AAdvantage Award Certificate. These rules, regulations, conditions and limitations, include, without limitation, those relating to the accumulation of AAdvantage mileage, the use and claiming of AAdvantage awards, the time and duration of blackout periods, the expiration of AAdvantage miles and the sale and transfer of AAdvantage awards or mileage. Information about the AAdvantage program, including copies of AAdvantage program materials may also be obtained by writing to the AAdvantage Department at American Airlines, Inc., P.O. Box 619616, M.D. 1396, DFW Airport, TX 75261-9616.

(13) American Airlines has reserved the right to change the AAdvantage Program rules, regulations, travel awards and special offers at any time. American Airlines has reserved the right to end the AAdvantage program with six (6) months notice.

volving the accumulation of mileage, the claiming and use of awards, and other substantive matters. The complainants characterize this statement as incorporation by reference which, they argue, violates the duty to file all relevant information in tariffs under section 403(a) of the Act and section 221.38 of the DOT regulations. They claim further that such a provision, coupled with the right reserved in paragraph (13) to change program rules, travel awards, and special offers "at any time," allows American to make substantive program changes "by newsletter," without tariff filings required by section 403(c) and without DOT review.

As American correctly observes, however, this argument is based on several invalid premises. First and foremost, the tariffs do not purport to "incorporate by reference" any present or future frequent flyer rules or award restrictions. That is, they do not attempt to give them legal effect as part of a federally approved tariff. To the contrary, paragraph (12) states unambiguously that "this tariff does not establish the rules, regulations, conditions and limitations of the AAdvantage program, or any right to acquire benefits under the program." It confirms and provides clear notice that all such matters, the principal elements of which are generically described, are not a part of the tariff, but part of a private contract between the carrier and each participant, based on direct notice to the public of all terms and conditions through promotional and program materials.⁴ As paragraph 1 of section A of the tariff makes clear, the purpose and legal effect of the tariff is to set forth the awards themselves, that is, the particular discounts or upgrade rights affecting international air fare tariffs, and not conditions of

⁴ Similarly, in paragraph (13), American explicitly reserves the right to change program rules or to end the program through direct notice outside the tariff. We do not read the paragraph as being inconsistent with any tariff-filing requirements: the carrier acknowledges that it will file changes in the award schedule as part of its tariffs.

eligibility for those awards or restrictions on their redemption. While it appears that at least the principal features and restrictions of the AAdvantage program are set forth in section B of the tariff, they serve only to clarify the scope and applicability of the tariff material. Contrary to the complainants' basic assumption, they do not determine or affect consumers' substantive rights in any way.

The second erroneous premise is that the AAdvantage program rules must be filed for substantive review under the Act. As American states, section 403 requires the filing of rules in tariffs only to the extent required by regulations of the Department. Since the introduction of frequent flyer bonus programs in 1981, the carriers have voluntarily filed those award bonuses affecting fares in tariffs, and both the CAB and the Department have accepted them as appropriate binding tariff material consistent with the well-established practice of filing air fare discounts. But neither the CAB nor the Department has ever determined that any of the program rules must be filed for approval as tariffs; in other words, rule summaries have never been considered binding tariff material warranting such review.

The reasons for this policy are compelling. As American observes AAdvantage and most other frequent flyer programs are broad-based marketing programs which extend far beyond air transportation. Members can earn mileage awards by renting cars or making credit card or catalogue purchases as well as by flying; the awards may be used to obtain discounts for hotels, cars, and merchandise as well as for air fares. Moreover, while frequent flyer program benefits might involve international travel, from the outset the target public for these marketing programs has been that of the domestic market. In these circumstances, to require and review tariffs governing the program rules themselves would involve the Department in economic judgments outside of its regulatory expertise and certainly

impinge upon the mandate and principles underlying the deregulation of domestic air transportation.⁵

A third erroneous premise, closely related to the second, is that the frequent flyer program rules constitute an improper "enlargement" of transportation rights defined in the tariff, in violation of the judicial doctrine that filed tariffs are "conclusive and exclusive" statements of legal rights between carriers and passengers. American correctly observes that case law on the effect of filed tariffs merely supports the proposition that the courts will presume that tariffs are complete and conclusive statements of matters required to be filed unless the tariff contemplates supplementation through express agreement between the parties, or unless there is evidence that the parties have agreed upon terms not expressly set forth in the tariff which are not inconsistent with it. *Northwest Airlines, Inc. v. United States*, 444 F.2d 1097 (Ct. Cl. 1971); *Slick Airways Inc. v. United States*, 292 F.2d 515 (Ct. Cl. 1961).⁶ Moreover, there is no law or policy precluding contractual agreement on matters not required to be filed. As it is merely clarifying information, Amer-

⁵ The complainants argue that the award revisions in Tariff CAB No. 465 improperly purport to govern domestic air transportation by providing for free tickets to Hawaii. However, the tariff governs travel between the United States or Canada and various points. In view of the tariff's prominent disclaimer that "none of the provisions of this tariff apply to interstate, intrastate or overseas transportation of passengers and baggage, as defined in the Federal Aviation Act," we construe the cited award provision as contemplating only foreign air transportation. In filing frequent flyer award structures, carriers should be careful to comply fully with § 399.40 of our regulations as American has.

⁶ It is a well established practice under § 221.38(a), for example, that carriers need not file actual "blackout" dates, during which particular discounts are not available, or specific limits on the number of seats and/or flights available at particular discounts. Rather, tariffs need only give notice that discounts may be subject to such limits. American's tariffs do so.

ican's summary of its program rules is not inconsistent with judicial precedent.⁷

The foregoing conclusions also undercut the complainants' procedural challenges to the grant of the STP application based on filing, notice, and approval requirements. Such challenges were directed at the AAdvantage rules rather than the award structure itself. Their remaining argument, that the STP application did not show an "actual emergency or real merit" as required by section 221.190 of the regulations, is similarly misplaced. American's revised award structure does in fact meet the criterion of "lowered fares, rates and charges" set forth in section 221.190(b)(6).⁸ It adds two new categories of optional awards, reduces the minimum mileage for various awards, increases the number of two-ticket awards available, and reduces certain travel restrictions. These constitute, in effect, liberalized fare discounts, which the Department has consistently held to be eligible for STP approval. And, given the clear and unambiguous language of paragraph (12) of the tariff, discussed above, there were no legal uncertainties which might have militated against STP approval. The complainants have made no allegation that the award structure is unreasonable, unduly discriminatory, or predatory under the statute. It was therefore fully consistent with Department regulations and policy to grant the STP application.

⁷ Indeed, the information in American's tariffs regarding the relationship between its award schedule and the contractual means by which awards may be obtained would seem to qualify under § 221.38(a)(1) of the regulations as explanatory statements designed to remove doubt as to the application of the tariff terms themselves.

⁸ The language of § 221.190(a) cited by complainants reflects the statutory exemption criteria prior to the Airline Deregulation Act of 1978. See 49 U.S.C. § 1386(b)(1), as amended by 92 Stat. 1731, 1732, 94 Stat. 39. Since then, the statutory criterion has been consistency with the "public interest," which incorporates revised procompetitive policies, and the Department has interpreted the STP rules accordingly.

Finally, there are no incompatibilities between American's tariff revisions and international tariff-filing requirements or procedures. The STP application contains the required certification that the proposal has been submitted to all affected governments where required by the bilateral air agreement, and the award structure itself plainly identifies those fare discounts which are "subject to foreign government approval." If a particular foreign government may require prior approval of aspects of the frequent flyer rules that we do not, consistent with the applicable bilateral, there is nothing in American's tariff or in our regulation which would frustrate such a requirement.

ACCORDINGLY,

1. We deny the complaints filed by the American Association of Discount Travel Brokers in Dockets 46188 and 46192, together with all related relief requested;
2. We will serve this order on American Airlines, Inc., and the American Association of Discount Brokers; and
3. We will publish a summary of this order in the Federal Register.

By:

JEFFREY N. SHANE
Assistant Secretary for Policy
and International Affairs

(SEAL)

**IN THE APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT**

No. 89-918

No. 88 CH 7554

MYRON (MIKE) WOLENS, ALBERT J. GALE,
R. CRAIG ZAFIS, BRET MAXWELL and ROBERT NELSON,
individually and on behalf of others similarly situated,
Plaintiffs-Appellees,

v.

AMERICAN AIRLINES, INC.,
a foreign corporation,
Defendant-Appellant.

Consolidated with:

No. 89 CH 119

Hon Arthur L. Dunne
Presiding

P.S. TUCKER, on behalf of herself
and all others similarly situated,
Plaintiff-Appellee,

v.

AMERICAN AIRLINES, INC.,
a foreign corporation,
Defendant-Appellant.

Appeal from the Circuit Court of Court of
Cook County, IL County Department,
Chancery Division

ORDER

THIS MATTER COMING before the Court on defendant's Petition for Certificate of Importance, and the Court being fully advised;

The court finds that pursuant to Illinois Court Rule 316 this is an appeal involving important issues that should be heard by the Illinois Supreme Court;

IT IS THEREFORE ORDERED that the Petition is granted/, and this appeal is/certified to the Illinois Supreme Court.

ENTERED:

/s/ David Cerda
Justice

/s/ William S. White
Justice

/s/ Don Rizzi
Justice

[Ordered Entered Jan. 25, 91]